

OREGON LAND EXCHANGE ACT OF 2000

JULY 17, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1629]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 1629) to provide for the exchange of certain land in the State of Oregon, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1629 is to provide for the exchange of certain lands in the State of Oregon.

BACKGROUND AND NEED

S. 1629 authorizes two exchanges of public and private lands in Oregon: the Triangle Land Exchange and the Northeast Oregon Assembled Land Exchange. Approximately 54,000 acres of Bureau of Land Management (BLM) and Forest Service land is proposed to be traded for nearly 50,000 acres currently held by private landowners in northeast Oregon. The bill requires that the lands to be exchanged be of equal value, or equalized by cash payments or a reduction in the amount of private land acquired.

Both the United States and the private landowners will benefit from this exchange. The BLM and Forest Service will acquire sensitive river corridors which will improve the efficiency of their protection efforts for threatened and endangered fish. Currently, many of these lands are intermingled with private parcels and make re-

source management difficult for the agencies. The improvement of fish-bearing streams and riparian areas is critical to the survival of many struggling species of fish in the Northwest.

Communities and landowners will also benefit from these exchanges. The consolidation of ownership patterns and the release of previously inaccessible forest lands will boost local economies and enhance the ability of the private sector to manage its own lands.

The House of Representatives companion legislation to S. 1629 is H.R. 2950, authored by Congressman Greg Walden (R-OR).

LEGISLATIVE HISTORY

S. 1629 was introduced on September 23, 1999, by Senator Gordon Smith (R-OR). On April 13, 2000, the bill passed the Senate by unanimous consent. The bill was referred to the Resources Committee and within the Committee to the Subcommittee on National Parks and Public Lands and the Subcommittee on Forests and Forest Health. On May 24, 2000, the Full Resources Committee met to consider S. 1629. The two Subcommittees were discharged from further consideration of the bill by unanimous consent. No amendments were offered, and the bill was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section (1) contains the short title, the “Oregon Land Exchange Act of 2000.”

Section 2. Findings

This Section contains Congressional findings.

Section 3. Definitions

This Section defines terms used in the bill.

Section 4. BLM-Northeast Oregon Assembled Land Exchange

This Section requires the Secretary of the Interior, upon request of the Clearwater partnership, to exchange approximately 50,320 acres of federal lands administered by the BLM for approximately 44,150 acres of private lands, as provided in Section 6. The lands to be exchanged are identified on the referenced map.

Section 5. Forest Service-Triangle Land Exchange

This Section requires the Secretary of Agriculture, upon request of the Clearwater partnership, to exchange approximately 3,901 acres of federal lands administered by the Forest Service for approximately 5,700 acres of private lands as provided in Section 6. The lands to be exchanged are identified in the referenced map.

Section 6. Land exchange terms and conditions

Subsection (a) requires the land exchanges to be conducted in accordance with Section 206 of the Federal Land Policy and Management Act and other applicable laws.

Subsection (b) provides that any exchange of land may be accomplished in a single transaction or in phases.

Subsection (c) requires completion of exchanges within 90 days of an agreed upon appraisal.

Subsection (d)(1) requires appraisals to be determined by recognized appraisal standards. Paragraph (2) requires all appraisals to determine the best use of the land in accordance with the law of the State of Oregon, including use for the protection of wild and scenic river characteristics. Paragraph (3) requires appraisals to be completed and submitted to the appropriate Secretary for approval no later than 90 days after the date Clearwater requests the exchange. A summary of each appraisal will be available for public inspection. Paragraph (4) requires that after the appropriate Secretary approves the appraised value of the land conveyed, the land shall not be reappraised or updated.

Subsection (e) requires that the values of the offered land and the selected land shall be equal or if not equal, shall be equalized. Cash received by the Secretaries may be used to purchase land from willing sellers.

Subsection (g)(1) requires that the land acquired by the Secretary of Interior shall be managed in accordance with laws and regulations applicable to BLM lands. The land acquired by the Secretary of Agriculture shall be managed in accordance with laws and regulations applicable to National Forest System lands, except lands within the North Fork of the John Day subwatershed shall also be managed primarily for fish, wildlife, and public recreation. Other uses may occur if the Secretary determines that such uses are consistent with, and do not diminish, these purposes. This requirement will provide additional protection beyond that provided in other applicable federal land management regulations and statutes.

Section 7. Authorization of appropriations

This Section authorizes the appropriation of such sums as may be necessary to carry out this bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of the report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section

308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill would create new direct spending, but “that any such spending would be negligible.”

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 30, 2000.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1629, the Oregon Land Exchange Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the state, local, and tribal impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1629—Oregon Land Exchange Act of 2000

CBO estimates that implementing S. 1629 would have no significant impact on the federal budget. Because S. 1629 would create new direct spending authority, pay-as-you-go procedures would apply, but CBO estimates that any such spending would be negligible. S. 1629 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 1629 provides that upon the request of Clearwater Land Exchange—Oregon (an Oregon partnership), the Secretaries of the Interior and Agriculture shall exchange certain federal lands in the state of Oregon for certain private lands in the state. Specifically, the Secretary of the Interior would convey about 50,320 acres of Bureau of Land Management (BLM) land in exchange for about 44,150 acres of private land. In addition, the Secretary of Agriculture would convey 3,901 acres of federal land within the Malheur National Forest in exchange for about 5,700 acres of private land within the Malheur, Wallowa-Whitman, and Umatilla National Forests. Information from the two agencies indicates that

the exchanges could affect grazing allotments, but CBO estimates that any impact on grazing receipts would be insignificant.

S. 1629 would give the Secretaries the authority to retain any cash equalization payments received in these exchanges and to spend them, without further appropriation action, to purchase other land in Oregon. The Secretaries do not have such authority under current law. Therefore, enacting S. 1629 could result in new direct spending if the private parties in these exchanges were to make cash equalization payments to the federal government to complete the transactions. According to BLM and the Forest Service, the land exchanges are intended to be of equal value and no cash equalization payments are planned. Based on that information, CBO estimates that this legislation would have no significant effect on direct spending.

On March 8, 2000, CBO transmitted a cost estimate for S. 1629 as ordered reported by the Senate Committee on Energy and Natural Resources on February 10, 2000. The two versions of the legislation, and their estimated costs, are identical.

The CBO staff contacts for this estimate are Megan Carroll (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

While attractive conceptually, exchanging public for private land raises a number of serious concerns in practice. These concerns persist despite the existence of standards set forth in the Federal Land Policy and Management Act (FLMPA) (43 U.S.C. 1701 et seq.) and critical assessment of the administrative exchange process, most recently by the General Accounting Office¹. Unfortunately, S. 1629 completes two relatively large exchanges legislatively, bypassing many of the safeguards provided by the administrative exchange process.

The two exchanges to be completed by this legislation illustrate the difficulties of exchanges in general. For example, FLMPA mandates that exchanges involve lands of equal or nearly equal value. However, the appraisal process employed by federal land management agencies frequently fails to achieve this central goal, allowing exchange proponents to fund appraisals for public lands they have selected and to keep those appraisals secret after the lands have been exchanged. As a result, it is frequently unclear if the land being acquired by the public is as valuable as the land being traded into private hands. In some cases it clearly is not.

S. 1629 requires further appraisals but specifies that the values are to be determined “in accordance with the law of the State of Oregon” rather than federal law, requires the appraisals to be completed within 90 days and limits public access to the appraisal results. Therefore, as in many exchanges, the public is denied the information required to determine accurately whether valuable resources, in this case disappearing “old growth” forest, are being properly valued and this legislation deepens that concern by instituting an arbitrary time limit, unusual standards and increased secrecy.

The involvement of third-party exchange “facilitators” has also raised questions about the integrity of the exchange process in general, and this exchange in particular. Is the public well served when a third party selects the public lands to be exchanged, rather than the land managers, and then oversees all aspects of the exchange process? How can the taxpayers be certain that the goals of the facilitator are consistent with the public interest? Clearwater Land Exchange, a private, for-profit, real estate firm, plays a central role in the transactions covered by this legislation.

While the Administrative exchange process is flawed, allowing that process to run its course might have addressed some of these questions. At the very least, completion of the assessments required by the National Environmental Policy Act (NEPA) (42

¹ See: United States General Accounting Office, Report to the Ranking Minority Member, Committee on Resources, House of Representatives, BLM and the Forrest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June, 2000.

U.S.C. 4321 et seq.) would provide a higher level of confidence that the public interest is being well served by this exchange. While compliance with NEPA is waived by Congress far too often, halting the process midway through completion is unwise.

The House should consider improvements to this legislation during consideration of S. 1629. In addition, the Congress should heed the concerns raised by the most recent GAO report on land exchanges and refrain from legislating further exchanges until significant changes in the existing administrative exchange process have been made.

GEORGE MILLER.
RUSH HOLT.
FRANK PALLONE, Jr.

